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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OWEN DIAZ,
 Plaintiff,
 v.
 TESLA, INC. dba TESLA MOTORS, INC.;
 Defendant.

Case No. 3:17-cv-06748-WHO

**PLAINTIFF'S PROFFER OF
 TESTIMONY OF OWEN DIAZ RE:
 SCOPE OF ANTICIPATED
 TESTIMONY OF MICHAEL WHEELER**

Trial Date: March 27, 2023
 Complaint filed: October 16, 2017

As ordered by the Court at the Pretrial Conference held on February 27, 2023, plaintiff
 Owen Diaz hereby provides the Court with trial and deposition testimony by Mr. Diaz
 concerning his awareness of the "feces incident" experienced by Michael Wheeler during his

Plaintiff also provides the Court with Mr. Wheeler's prior deposition and trial testimony concerning his experience of the incident, the numerous complaints he made about it to his supervisors at Tesla, and that he informed Mr. Diaz of the incident.

[illegible]

¹ Plaintiff also directs the Court's attention to his Opposition to Tesla's Motions *in Limine*, Dkt 391, at 22-23, in which Mr. Diaz explained the many *additional* reasons why the feces incident is relevant to both compensatory and punitive damages. The Court already denied Tesla's motions *in limine* on this issue and Tesla offers no new reason why this evidence, admitted at the first trial, should be excluded at the second trial.

1	█	█	█
2		█	█
3			█
4			█
5			█
6			█
7			█
8			█
9			█
10			█
11			█
12			█
13			█
14			█
15			█
16			█
17			█
18			█
19			█

This testimony is attached as **Exhibit 1** to the supplemental declaration of Cimone Nunley, filed concurrently herewith.

#	Lines	Deposition Excerpt
23	█	█
24	█	█
25		█
26		█
27		█
28		█
		█
		█
		█

1		[REDACTED]
2		[REDACTED]
3		[REDACTED]
4		[REDACTED]
5		[REDACTED]
6		[REDACTED]
7		[REDACTED]
8		[REDACTED]
9		[REDACTED]
10		[REDACTED]
11		[REDACTED]

This testimony is attached as **Exhibit 1** to the supplemental declaration of Cimone Nunley, filed concurrently herewith.

#	Lines	Deposition Excerpt
15	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]
17		[REDACTED]
18		[REDACTED]
19		[REDACTED]
20		[REDACTED]
21		[REDACTED]
22		[REDACTED]
23		[REDACTED]
24		[REDACTED]
25		[REDACTED]
26		[REDACTED]
27		[REDACTED]
28		[REDACTED]

This testimony is attached as **Exhibit 1** to the supplemental declaration of Cimone Nunley, filed concurrently herewith.

Wheeler, Michael, Deposition 6/12/2019:

#	Lines	Deposition Excerpt
1.	54:9-18	<p>9 Q. Okay. Let me -- let's go incident by</p> <p>10 incident.</p> <p>11 So you told Owen about an incident where</p> <p>12 someone had put some feces in your seat; is that</p> <p>13 right?</p> <p>14 A. I told everyone about that incident. I</p> <p>15 sent out a very long email to Victor and anyone on</p> <p>16 that thread, asking -- and security as well, asking</p> <p>17 for them to check the cameras because this is</p> <p>18 unacceptable.</p>

This testimony is attached as **Exhibit B** to the declaration of Cimone Nunley, filed concurrently herewith.

Wheeler, Michael, Jury Trial Proceedings 9/29/2021, Vol. 3:

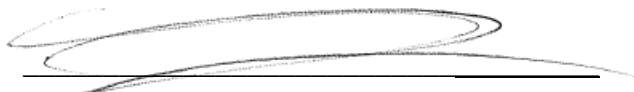
#	Lines	Trial Testimony Excerpt
1.	432:10-433:10	<p>10 Q. Now, is there any other incident that occurred to you</p> <p>11 inside the workplace that you believed was racially motivated</p> <p>12 directed towards you?</p> <p>13 A. Yes.</p> <p>14 Q. And can you describe that incident?</p> <p>15 A. There was a night I had taken -- there was a night I had</p> <p>16 taken lunch, and I was on my lunch for about an hour. And then</p> <p>17 when I returned to my cart, I sat down, slid across the seat</p> <p>18 like I did every night, and I felt something wet on my seat.</p> <p>19 And it took me a second to process it. I got back up and there</p> <p>20 was feces all over my seat, all over my pants. There was some</p> <p>21 on my hands.</p> <p>22 Q. And did you report this incident of finding feces on your</p> <p>23 cart to anyone at Tesla?</p> <p>24 A. I did.</p> <p>25 Q. Who did you report that to?</p>

1 A. Umm, everybody. Security, all the supervisors, Ramon,
 2 Jose Torres, Victor Quintero.
 3 Q. Ed Romero?
 4 A. Yes -- uh, I don't -- I do not recall for Ed, but...
 5 Q. So the department that you worked in, Victor Quintero was
 6 ultimately over your department?
 7 A. Absolutely, yes.
 8 Q. So you reported it to numerous people in management and
 9 supervision inside Tesla; right?
 10 A. I did, yes.

This testimony is attached as **Exhibit A** to the declaration of Cimone Nunley, filed
 concurrently herewith.

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DATED: March 3, 2023



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